



September 7, 2001

Ms. Julie Reagan Watson
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2001-3977

Dear Ms. Watson:

You ask this office to examine Open Records Letter No. 2001-2784 (2001) and whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151657.

The Department of Human Services (the "department") received a written request for "all information on the current investigation of alleged improper conduct of Girling, Inc. in the solicitation of PHC/CBA clients of Solis, Co." You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 142.009 of the Health and Safety Code. In Open Records Letter No. 2001-2784 we stated that "you did not, however, submit to this office copies or representative samples of the specific information that was requested." Consequently, we found that the department could not withhold the requested information. *See Gov't Code §§ 552.301(e)(1)(D), .302.* You ask this office to examine Open Records Letter No. 2001-2784 in light of your contention that this office mistakenly found that the department did not provide this office with the requested information that you wish to withhold. Where this office determines that a factual error is made when determining a governmental body's compliance with the decision process under section 552.301, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

You have informed this office that you did submit the requested information to this office on June 22, 2001. Upon further review of our files, we determined that in fact this office received the requested documents on June 26, 2001, shortly before OR2001-2784 was issued

on June 28, 2001. Consequently, we will further consider your request for an open records ruling regarding the requested information.

We note at the outset that you acknowledge that you did not submit to this office in a timely manner a copy of the records at issue. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen days of receipt of the records request "a copy of the specific information requested." Gov't Code § 552.301(e)(1)(D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. However, because you contend that the requested information is made confidential under section 142.009 of the Health and Safety Code, we will consider the applicability of this statute.¹ See Open Records Decision No. 150 (1977) (demonstration that information is made confidential by statute constitutes compelling reason for non-disclosure).

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 142.009(c) of the Health and Safety Code authorizes the department to conduct investigations of complaints regarding the provision of home health, hospice, or personal assistance services. Section 142.009(d) provides as follows:

The reports, records, and working papers used or developed in an investigation made under [section 142.009 of the Health and Safety Code] are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule; or
- (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency.

¹Because we resolve your request under section 142.009 of the Health and Safety Code, we need not address your other arguments for withholding the requested information.

You inform us that Girling, Inc., the subject of referenced investigation, provides home health, hospice, or personal assistance services. The records you submitted to our office as Attachment C clearly constitute "reports, records, and working papers used or developed in an investigation" under section 142.009(c) of the Health and Safety Code. Furthermore, we have no reason to believe that any of the exceptions to confidentiality in section 142.009(d) apply to these records.² We therefore conclude that the department must withhold Attachment C in its entirety pursuant to section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

²The records before us do not appear to contain a state form required to be released under section 142.009(d)(5).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/RWP/seg

Ref: ID# 151657

Enc. Submitted documents

c: Mr. Roy Serpa
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(w/o enclosures)